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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/767,486	01/29/2004	Tyrone D. Bekiares	CM06716H	5032
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MOTOROLA, INC. 1303 EAST ALGONQUIN ROAD IL01/3RD SCHAUMBURG, IL 60196			EXAMINER CHEA, PHILIP J	
			ART UNIT 2153	PAPER NUMBER
			NOTIFICATION DATE 06/10/2008	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

Docketing.Schaumburg@motorola.com
APT099@motorola.com

Office Action Summary

Application No.

10/767,486

Applicant(s)

BEKIARES ET AL.

Examiner

PHILIP J. CHEA

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 March 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

This Office Action is in response to an Amendment filed 10/767486. Claims 1-20 are currently pending. Any rejection not set forth below has been overcome by the current Amendment.

Claim Objections

1. Claim 19 is objected to because of the following informalities: The specification alludes to the Middleware as being software or hardware (see Specification paragraph 10) and the claim does not limit the Middleware to be one or the other. One of ordinary skill in the art could interpret the Middleware to be solely software (i.e. software per se). Software does not fall under one of the four statutory categories. Appropriate correction is required.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jasen et al. (US 2002/0019879), herein referred to as Jasen, and further in view of Benveniste (US 2004/0196864).

As per claims 1,18,20, Jasen discloses a method for use by middleware in a communication system comprising the steps of:

enabling a group of behavior sets for use by middleware wherein the middleware provides an interface between at least one application running on a first device and at least one network transport element external to the first device (see paragraphs 18 and 22, where an NTM system is considered the middleware that provides client and server functionality that allows prioritization of web traffic wherein the behavior sets are considered the different priorities), and wherein each behavior set in the group provides for at least one of a different set of routing rules and a different Quality of Service for

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traffic sent between the at least one application and the at least one network transport element (see paragraph 26);

operating in accordance with a first behavior set from said group (see paragraph 22, where the first behavior set is considered normal network traffic);

receiving at least one trigger (see paragraph 24, where a trigger is considered applying a coupon);

selecting a second behavior set from said group based upon said at least one trigger (see paragraph 26); and

operating in accordance with said second behavior set (see paragraph 26).

Although the system disclosed by Jasen shows substantial features of the claimed invention (discussed above), it fails to disclose that the trigger indicates at least one of a condition of mission criticality or a level of mission criticality for a situation that is external to the middleware, external to data routed to and from the middleware and external to data associated with a user of the middleware.

Nonetheless, these features are well known in the art and would have been an obvious modification of the system disclosed by Jasen, as evidenced by Benveniste.

In an analogous art, Benveniste discloses receiving at least one trigger that indicates at least one of a condition of mission criticality or a level of mission criticality for a situation that is external to the middleware, external to data routed to and from the middleware, and external to data associated with a user of the middleware (see paragraphs 11 and 14, describing how a condition for a mission critical situation (i.e. a 911 call) is treated with a higher quality of service; further implying that the mission critical situation is external (e.g. a fire external to the middleware, external to data routed to and from the middleware, and external to data associated with a user that caused someone to dial 911)).

Given the teaching of Benveniste, a person having ordinary skill in the art would have readily recognized the desirability and advantages of modifying Jasen by employing an external trigger situation, such as disclosed by Benveniste, in order to receive higher priority for emergency 911 calls.

As per claim 2, Jasen further discloses notifying a second middleware of the selecting of said behavior set, wherein the second middleware provides an interface between at least one application

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running on a second device and at least one network transport element external to the second device (see paragraph 24, where the second device is considered the NTM server).

As per claim 3, Benveniste further discloses the at least one trigger is at least one of:

a light bar activation;

a light bar deactivation;

a change in the time of day;

the speed of a vehicle;

location information;

an emergency bar activation;

an emergency bar deactivation;

an emergency button activation;

an emergency button deactivation;

a siren activation;

a siren deactivation;

a dispatch warning;

a change in dispatch status;

a change in incident status (see paragraph 14, where a 911 call is considered a change in incident status); and

a change in situational status.

As per claim 4, Jasen further discloses that the middleware is a middleware client (see paragraph 18).

As per claim 5, Jasen further discloses that the middleware is a middleware server (see paragraph 18).

As per claim 6, Jasen further discloses implementing a set of routing rules and Quality of Service determined as a function of said second behavior set (see paragraph 26).

As per claim 7, Jasen further discloses that the first behavior set is a default behavior set (paragraph 22).

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As per claim 8, Jasen further discloses that the at least one trigger is at least one of a remote trigger and an external trigger (see paragraph 23).

As per claim 9, Jasen further discloses examining state information and wherein said second behavior set is selected based upon said state information (see paragraph 23).

As per claim 10, Jasen further discloses that the second behavior set is selected based upon a determination of a first condition (see paragraph 26).

As per claim 11, Benveniste further discloses that the first condition is the at least one of the condition of mission criticality or the level of mission criticality (see paragraph 14, where the condition is a 911 call).

As per claim 12, Jasen further discloses that determination of said first condition is made external to said middleware and communicated to said middleware via said at least one trigger (see paragraph 23).

As per claim 13, Jasen further discloses that determination of said first condition is made by a second middleware that provides an interface between at least one application running on a second device and at least one network transport element external to the second device (see paragraph 23).

As per claim 14, Jasen further discloses that determination of said first condition is made manually (see paragraph 47);

As per claim 15, Jasen further discloses that determination of said first condition is internal to said middleware based on said at least one trigger (see paragraph 47).

As per claim 16, Jasen further discloses that at least one of the behavior sets in said group is predefined (see paragraph 26).

As per claim 17, Jasen further discloses that at least one of the behavior sets in said group is dynamically determined (see paragraph 26).

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As per claim 19, Jasen in view of Benveniste further discloses Middleware for mediating between at least one application and at least one communication network transport, said middleware comprising:

an application interface to at least one application running on a device (see paragraph 49);

a network interface to at least one network transport element external to the first device (see paragraph 16);

a group of behavior sets, wherein each behavior sets, wherein each behavior set in the group provides for at least one of a different set of routing rules and a different Quality of Service for traffic sent between the at least one application and the at least one network transport element (see paragraph 26); and

a behavior set selection function operative for causing said middleware operate in accordance with a first behavior set from said group (see paragraph 26); receiving at least one trigger (see paragraph 23) that indicates at least one of a condition of mission criticality or a level of mission criticality for a situation that is external to the middleware, external to data routed to and from the middleware, and external to data associated with a user of the middleware (see Benveniste paragraphs 11 and 14, describing how a condition for a mission critical situation (i.e. a 911 call) is treated with a higher quality of service; further implying that the mission critical situation is external (e.g. a fire external to the middleware, external to data routed to and from the middleware, and external to data associated with a user that caused someone to dial 911)); selecting a second behavior set from said group based upon said at least one trigger (see paragraph 26); and causing said middleware to operate in accordance with said second behavior set (see paragraph 26).

Response to Arguments

4. Applicant's arguments filed March 3, 2008 have been fully considered but they are not persuasive.

A) Applicant contends that Benveniste does not disclose receiving at least one trigger that indicates at least one of a condition of mission criticality or level of mission criticality for a situation

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that is external to the middleware, external to data routed to and from the middleware, and external to data associated with a user of the middleware.

In considering A), the Examiner disagrees. Beneviste teaches prioritizing transmission of 911 frames during both call set-up where signaling frames are transmitted and after call set-up where voice frames are transmitted. The receiving of the trigger is taught by Jasen as discussed above "receiving at least one trigger (see paragraph 24, where a trigger is considered applying a coupon to gain prioritized web traffic)". Beneviste was used to show that the trigger indicated a condition of mission criticality. However, even if Jasen did not disclose receiving the trigger, Beneviste would still disclose receiving the trigger actuated by a 911 call (i.e. to begin the prioritization of the 911 frames) (see paragraph 14, "Once a 911 call has been set up...give 911 frames preferential treatment"). Therefore, the external trigger as claimed is met by the 911 call. That is, the 911 call acts as the trigger to give the 911 frames preferential treatment. If there was no 911 call to trigger the condition of mission criticality, the 911 frames would never get their preferential treatment.

Conclusion

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to PHILIP J. CHEA whose telephone number is (571)272-3951. The examiner can normally be reached on M-F 6:30-4:00 (1st Friday Off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Burgess can be reached on 571-272-3949. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Glenton B. Burgess/
Supervisory Patent Examiner, Art Unit 2153

Philip J Chea
Examiner
Art Unit 2153

PJC 6/2/08